mean that in the average classroom, two students have carried guns at some time in the previous month.

These figures are shocking, but they are hardly secret. We have grown so accustomed to the carnage that guns cause in America that only the most horrific acts of violence are capable of shaking us from our slumber. As I told the Economic Club of Detroit, the question we have to ask ourselves in the wake of the Columbine High School tragedy is: Are we willing to say that enough is enough? And will we say it not just today but next week and next month and next year?

The NRA is betting we will not. They believe their brand of single-minded, single-issue politics can once again paralyze us from acting, once these images of death and pain in Colorado fade from view. They are going to go on telling their members that even the most measured gun control proposal is a thinly veiled attempt to take away their legitimate hunting weapons. It will not stop there. They will use that membership as a potent political tool to intimidate candidates for office. It is a sad fact that, thus far, too many Americans and too many American children and their parents live in fear of gun violence because too many of us in Washington live in fear of the political power of the lobbyists of the NRA.

I believe there is also a power when people unite to demand action—businesspeople, labor union people, parents, teachers, police officers, young people, the clergy. When I look at the kind of coalition that could be represented by groups like that, I see a potential power that could dwarf any narrow special interest. The question is not whether we are in the majority. The polls show that a large majority of Americans will support strong action to reduce access of minors to guns. The question is not whether we have the power. We do. The question is whether we are willing to act to make America a safer country. For starters, we must ban the possession and sale of handguns, semiautomatic weapons, by and to minors.

We paused in this Chamber to observe a moment of silence in honor of the victims of gun violence in Colorado. We observe these moments of silence to pay tribute to those who have died and to express our sympathy for their loved ones. But now, with this latest tribute behind us, we need to be anything but silent. Those of us who want to act to reduce the gun violence need to be louder and clearer and stronger and, yes, more persistent than the NRA.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

FINANCIAL SERVICES MODERNIZATION ACT OF 1999

The Senate continued with the consideration of the bill.

Mr. GRAMM. Mr. President, I ask unanimous consent that when Senator SHELBY offers an amendment related to operating subsidiaries there be 2 hours equally divided in the usual form prior to a motion to table, and that no amendments or other motions be in order to the amendment prior to the vote on tabling.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, I have sought recognition, because I intend to offer a couple of amendments to the pending legislation. I would like to discuss the underlying bill just a bit more, and then also offer the amendments and discuss the amendments.

I spoke earlier today about this legislation, which is called the Financial Services Modernization Act of 1999, and said then that I am probably part of a very small minority in this Chamber, but I feel very strongly that this is exactly the wrong bill at exactly the wrong time. It misses all the lessons of the past and, in my judgment, it creates definitions and moves in directions that will be counterproductive to our financial future.

What does this bill do? It would permit common ownership of banks, insurance, and securities companies, and to a significant degree commercial firms as well. It will permit bank holding companies, affiliates, and bank subsidiaries to engage in a smorgasbord of expanded financial activities, including insurance and securities underwriting, and merchant banking all under the same roof.

This bill will also, in my judgment, raise the likelihood of future massive taxpayer bailouts. It will fuel the consolidation and mergers in the banking and financial services industry at the expense of customers, farm businesses, family farmers, and others, and in some instances I think it inappropriately limits the ability of the banking and thrift institution regulators from monitoring activities between such institutions and their insurance or securities affiliates and subsidiaries raising significant safety and soundness consumer protection concerns.

This morning I described what is happening in the financial services sector by showing a chart of big bank mergers just in the last year. You couldn't help but to have picked up a daily paper at some point last year and read a headline about another bank deciding to combine or merge with another large bank.

April 6, Citicorp decided it was going to grab up Travelers Group and have a $698 billion combined asset corporation—not exactly a mom and pop, but two big very successful companies decide they want to get hitched.

NationsBank apparently fell in love with BankAmerica. Bank One decided it wanted to be related to First Chicago, and Wells Fargo likes NorWest. So we have merger after merger, buyout after buyout, and the big banks get bigger.

We already have a circumstance in this free market economy of ours in which you ought to have easy entry and easy exit into the marketplace and the right to make money and to lose money. We already have a circumstance in banking called ''too big to fail.'' If you are big enough, the ordinary market rules don't apply to you. You have the old Federal Reserve Board out there. And the Fed says we have a list of banks that are ''too big to fail,'' meaning they have become so big that if they were to fail and made some pretty dumb decisions, lose a lot of money, that their failure would be so catastrophic and such a shock to the economic system in this country that we couldn't possibly let that happen. So we have a list of banks at the Federal Reserve Board. That list says these banks are ''too big to fail''—no-fault capitalism. But the list is growing. That list of ''too big to fail'' banks in America is growing because the big banks are getting bigger, and this record-breaking orgy of mergers in our country moves now at an accelerated rate unabated.

In the context of all of this—it is not just with banks but all financial services companies—at a time when banks, investment banks, underwriters of securities, insurance, and others are showing very handsome profits in our country, we are told, ''You know, what is really wrong here with America is we need to modernize this system. The lack of modernization is hurting us. In fact, some U.S. banks are able to do things overseas they can't do here. What a shame. It is awful to hold them back,'' we are told. ''So let us modernize.''

In ranching parlance, this would be like if the horse gets out of the barn, you decide, ''Let's find out where the horse is and build a new barn around the horse.'' That is what this is all about. Where I grew up we raised horses. When a horse got out of the barn, you know what we did. We went and chased the horse, caught the horse, and brought the horse back to the barn. That is not rocket science. I didn't have to take a lot of school courses to teach me that. You go bring the horse back.

But now, what they have decided is no. We will just decide, all right, the horses are out of the barn, and in the way things are supposed to work, in a manner that preserves safety and soundness of our banks, in a manner that preserves separation of certain kinds of activities—some that are inherently risky as opposed to those that require safety and soundness—things have happened. We are persuaded to get rid of all of the old rules, and we will rewrite them in a way that circumstances and activities have been happening in our country. We'll say those who have done it, OK, that is where you are, a new day, we will call it modernization. We will just say it is just fine. Well, it is not fine with me.

It is interesting that we live in 1999, now in the month of May, having experienced this remarkable economy. I am one who, with all of my colleagues, would say what a remarkable opportunity, to live in an economy that has virtually no inflation, has virtually full employment, seems to have economic growth that continues unabated, and whose stock market continues to set new records—23 days, another 1,000 points. You get the feeling, gee, the stock market is like one of those slot machines that pays off every time you pull the handle. Every time you put a quarter in you get a return back beyond what you put in.

There are people who have begun to invest in this economy of ours through mutual funds, and in the markets and so on who apparently believe there is only one direction for our economy and only one direction for our markets, and that is up, and single digit returns are not sufficient. Returns are now expected of 15, 20, 25, 30 percent a year. Of course, that will not continue.

We want a country with the twin economic goals of stable prices, full employment, and economic opportunity and growth. But we have been through periods in this country where when you sit down and add things up somehow the answer doesn't seem correct. This isn't all going to continue. One day in one way there will be adjustments. Companies selling 300 and 400 times earnings, we think that is going to continue? I don't think so.

What has happened in recent years in this country, despite all of the good news, is a series of economic activities by firms that 20 and 40 years ago would never have thought of engaging in those activities, and those activities which really represent kind of a new form of gambling by firms that should not be involved in gambling represents now an acceptable kind of behavior.

Let me give you some examples of some of it. I started this morning. But I am going to read a bit more, because I think it is important for everybody to understand and hear this.

I mentioned ''too big to fail''—big banks that have become so big that our Government says they can't be allowed to fail. Of course, we continue then every day to see more mergers to allow more banks to join that ''too big to fail'' list.

It is not just the banks. I want to read the story again of Long Term Capital Management in an article from the Wall Street Journal last fall, because I think it is illustrative of not just what is happening at this moment in this chapter of our history but also what happened in 1994 with the massive losses across our country in derivatives described in this Fortune article, ''The Risk That Won't Go Away,'' ''Financial derivatives tightening their grip on the world economy, and no one knows how to control them.''

Derivatives, unregulated hedge funds, banks, holding companies that now fuse and merge, banks underwriting securities, insurance—is all of that a cause for concern?

Let me read a couple of things and see whether perhaps this can be interpreted in a manner differently than those who have drafted the current legislation.

It is not a secret that I have said I think this current bill, the underlying bill, financial modernization for 1999, is a terrible bill. I don't mean disrespect to either the chairman of the committee or the ranking member of the committee. I don't mean any disrespect to them.

This is moving this country in the wrong direction. This is terrible legislation to be considering at this point.

Long Term Capital Management is a private company; big investors, all rich. You have to be rich to invest in Long Term Capital Management. You have to be smart. A smart operator with lots of money formed a private company called Long Term Capital Management and began betting. I will describe the bets in a moment.

It was Aug. 21, [last year] a sultry Friday, and nearly half the partners at Long-Term Capital Management LP were out of the office.

Inside, the associates that day logged on to their computer and they saw something that began to strike some fear in their hearts:

U.S. Treasuries were skyrocketing, throwing their relationship to other securities out of whack. The Dow Jones Industrial Average was swooning—by noon, down 283 points. The European bond market was in shambles. LTCM's [Long-Term Capital Management, this hedge firm, their] bets were blowing up, and no one could do anything about it.

By 11 a.m. [in the morning] the fund had lost $150 million in a wager [they made] on the prices of two telecommunication stocks engaged in a takeover. Then, a single bet tied to the U.S. bond market lost $100 million. Another $100 million evaporated [the next hour] in a similar trade in Britain. By day's end [this private hedge company] LTCM had hemorrhaged half a billion dollars. Its equity had sunk to $3.1 billion—down a third for the year.

This is the Wall Street Journal's recount of the story:

Partners scrambled out of their offices and onto the trading floor as associates stared at their screens in disbelief. Making frantic phone calls around the globe, they reached John Meriwether, the fund's founder, at a dinner in Beijing. He boarded the next plane to the U.S. Eric Rosenfeld, a top lieutenant, called in from Sun Valley, Idaho, where he was settling in for a vacation. He left his wife and children behind and made an all-night trip back to Greenwich.

Then the brass assembled the next morning. It is 7 o'clock now, 7 a.m. on Sunday.

One after another, LTCM's partners, calling in from Tokyo and London, reported that their market had dried up. There were no buyers, no sellers. It was all but impossible to maneuver out of large trading bets [that they had.] They had seen nothing like it.

The carnage that weekend set off events unprecedented in the world of high finance, culminating with a $3.625 billion bailout funded by a consortium of 14 Wall Street banks and engineered by the Federal Reserve [Board.] LTCM lost more than 90 percent of its assets by the time it was bailed out, and the markets were roiled for weeks. Longer term, it forced many of the world's most sophisticated institutional investors to redefine the ways they manage risk and triggered calls for tougher regulation of hedge funds, those freewheeling investment pools that cater to the wealthy.

Here is a company that lost $3.6 billion. What happened? It gets bailed out in a consortium of banks investing at the behest of the Federal Reserve Board at meetings arranged by the Federal Reserve Board.

We will hear a bit more about this case because it relates to an amendment I will be offering.

In an industry populated by sharp money managers, LTCM had the most renowned of all—including Nobel Prize winners Robert Merton and Myron Scholes. But in the end, it wasn't all rocket science. It was about smart marketing-appealing to a wealthy clientele who wanted to be able to say their money was being managed by a passel of Ph.D.s. And it was about massive borrowing, up to $50 for every dollar invested. Long-Term Capital Management was, ultimately, like a supermarket—a high-volume, low-margin business, trying to eke out small profits from thousands of individual transactions.

''Myron once told me they are sucking up nickels from all over the world,'' says Merton Miller, a University of Chicago business professor and himself a Nobel Prize winner in economics.

Continuing the quote:

''But because they are so leveraged, that amounts to a lot of money.''

All of which helps to explain how so many geniuses, sometimes overcoming divisions within their ranks, got it so wrong. And all the while, vanity, greed and a cult of personality blinded some of the world's most reputable financial institutions, from Wall

Street stalwarts to Swiss banks, to the pitfalls inherent in such a strategy.

The reason I offer this is to say we are now talking today on the floor of the Senate about a strategy that says we want to ignore the lessons of history. We want to ignore the fact that in the go-go 1920s, everybody was making money at about everything, and banks decided to fuse their activities and be involved not just in banking, but also in underwriting securities and a range of other very risky enterprises. We are going to ignore those lessons we learned during that period.

When studies were done to determine what happened in the 1920s, one of the things they discovered was what you expect. If you have something called banks whose perception of safety and soundness is at the root of their stability and viability, when banks are fusing their activities with inherently risky activities—underwriting securities, for example—ultimately those kinds of risks, those bets that exist, overcome the perception and the reality of safety and soundness, and people begin getting worried and nervous and pulling their money out of banks and we have bank failures.

So the Congress in the 1930s passed a bill called Glass-Steagall which said: Learn the lessons; my gosh, let us not put activities together with banks that are so inherently risky. We should separate them forever.

So we did. And we prohibited certain kinds of investment and acquisition by banks and required that certain enterprises do business and compete in their own sphere. Banks were prohibited from being involved in most of the securities issues, underwriting securities and insurance and more.

Over the years that served this country pretty well. Banks have made the case in recent years—and they are right about this—everybody else has wanted to invade their territory. Everybody now wants to be a bank. If you are selling cars, you want to finance the cars; you want to be a bank. Everybody wants to create some sort of homogenized one-stop station where people can buy their insurance, buy their home, finance it. So banks say people are intruding on their turf and the only conceivable way we can compete is if we can compete on their turf as well. They want Glass-Steagall repealed.

Guess what? Here it is. The bill that sits on the floor of the Senate today repeals Glass-Steagall. It forgets apparently 60 or 70 years of history. It will all be all right. Don't you see, the economy is growing, unemployment is down, inflation is down, the stock market is up. Don't you understand, Senator DORGAN?

I guess not. Maybe I am hopelessly old fashioned. I think it is a fundamental mistake to decide to repeal Glass-Steagall and allow banks and all of the other financial industries to merge into a giant smorgasbord of financial services. Those who were around to vote to bail out the failed savings and loan industry, $500 billion of the taxpayers' money, are they going to want to be around 10 or 15 years from now when we see bailouts of hedge funds putting banks at risk? Or how about the banks not just bailing out a hedge fund but banks having the ownership of the hedge funds?

That is what we have now. This bailout of Long Term Capital Management says we have significant investments by some of the largest banks in these hedge funds.

Or how about derivatives? I am not an expert in this area, but I wonder how many Members of this body know about derivatives. How many know that banks in this country are trading in derivatives—not for customers, but in their own proprietary accounts? They could just as well set up a bingo parlor in their lobby. They could just as well decide to have a casino somewhere in their lobby. The kind of betting and wagering that is going on in proprietary trading of derivatives in an institution whose assets are guaranteed by the taxpayers of this country is just wrong. Someday somebody is going to wake up and say: Why didn't we understand that? Why didn't we understand the consequences of hundreds of billions of dollars or, yes, even trillions of dollars of wagers out there with deposits at risk? Why didn't we understand that did not make any sense?

I wrote an article about this in 1994 that was published in the Washington Monthly. At that point there were $35 trillion in derivatives being traded. Now it is $70 trillion. It is hard for me to even say the number; $70 trillion in derivatives. Does anybody here know the exposure that exists in the largest banks of proprietary trading on derivatives? I will bet not. Does anybody understand what this bill does in these areas? It says: Hedge funds, we don't want to manage those; let them go, let them do what they will. How about derivatives? It doesn't do anything.

This is a GAO report from May, 1994. It is 5 years ago: ''Financial Derivatives, Actions Needed To Protect The Financial System.'' That report has been available for 5 years to all of the Members of Congress. If this legislation really was a modernization bill for financial institutions, you would have a solution to this issue in it. It would include my amendment that says no institution whose deposits are guaranteed by the American taxpayer will trade derivatives in their proprietary accounts—none of them. We will not allow gambling in the bank lobby. But of course the bill does not have that, so I will offer the amendment and it will be defeated because it is not in vogue, it is not in fashion. This bill moves in the other direction. It says, not only are things not wrong, don't be alarmed by hedge funds and derivatives; it says, let's just do more of what we have been doing that has caused some of this alarm.

As I mentioned, the piece of legislation before us repeals provisions of the Glass-Steagall Act that restrict the ability of banks and security underwriters to affiliate with one another. The bill repeals provisions in the Bank Holding Company Act by allowing a new category of financial holding company. This structure allows for a wide range of financial services to be affiliated, including commercial banking, securities underwriting, and merchant banking. And the new financial holding companies, by the way, may engage in the following: Lending and other traditional banking activities, insurance underwriting and agency activities, provide financial investment and economic advisory services, issue instruments representing interests in pooling of assets that a bank may own directly, securities underwriting and dealing, and mutual fund distribution, merchant banking. I think most listening to me understand my concern and deep reservations about the direction we are heading.

What about timing? This bill almost came to the floor of the Senate last year. I was one of those who objected, and as a result the legislation was not enacted. In fact, some of the folks who bring it to the floor today also objected because of some other issues. But it is now on the floor. It is in a different form than was passed out by the committee last year. But what about timing? It seems to me the past experiences we have had with banking and financial conglomerates in this country in this century, whose collapse has led to the adoption of the very financial protection laws they seek to repeal today, ought to be a cautionary note to those of us in Congress and to the American people. It seems to me the recent experiences we had with a nearly $500-billion bailout of a collapsed savings and loan industry ought to have some consequences, at least in terms of awareness of those in Congress who had to go through that experience.

It seems to me the question marks that hang over the international marketplace and the international economy ought to give pause to some—a very difficult collapsed economy in some parts of Asia, a Russian economy that has virtually collapsed, economic problems in other parts of the world, a description in the country of Japan of the keiretsu—the circumstances in a market system in Japan where a keiretsu allows the combining of virtually all economic activities into four or five firms that work together as partners to accomplish ends; you put the bank and the manufacturer all together.

What has happened as a result of that Japanese experience? Would we want to trade our economy for the Japanese economy? I don't think so. One would think that would give some folks pause.

Or how about the red flags that ought to have been flying for all of us with respect to the regulators' recent experiences dealing with excessive risk-taking in our system? Does it give anybody pause that on a Sunday night some of the smartest folks, the folks who were viewed as geniuses in New York, who put together this hedge fund, they had to be bailed out by the Federal Reserve Board running some folks across the street to convene an emergency meeting and then sitting there, apparently convening a group in which substantial numbers of large banks ante up billions of dollars to bail out a private firm? Is that a red flag for anybody? It suggests a conflict of interest for the Federal Reserve Board, of course, because they regulate the very banks that were incentivized to ante up money to bail out a private firm in order to avoid some sort of economic catastrophe, an economic catastrophe for the country. That is why the Fed was involved—because this private firm, too, was too big to fail. Does that raise any red flags with anybody? It does with me.

Or we are told, if we do not do this, it is going to be a disadvantage. To whom? Are the banks doing well in this country? You are darned right they are doing well, making lots of money. Security underwriting firms, merchant banking firms, are we doing well? America's corporations, are they doing well? Sure. Look at the stock market. Look at the profit reports. When we pass this bill, everybody in this Chamber knows what is going to happen. The first thing that is going to happen is, we are going to have more and more and more mergers because this turns on the green light at the intersection. It says if you all want to get together and just get into one big financial swamp here and have a smorgasbord of financial services, then buy each other up, that's just fine. This orgy of mergers we have already seen will simply accelerate. Will that be good for this country? Of course not.

Those who preach the loudest about the free market system do the least to protect it. I guarantee it is true. It has been true ever since I came to the Congress. Those who bellow the loudest about the free market do the very least in this country to protect it. We are going to have a fight a little later this year about antitrust enforcement. One way to be sure the free market remains free, open to fair, competitive competition, is to make sure you enforce your antitrust laws against cartels and monopolies. Interestingly enough, those, again, who talk a lot about the free market are the least likely to be supportive of aggressive antitrust enforcement, to make sure the market is free, open, and competitive.

This is a highly complicated issue. I know there are big stakes all around. We have the biggest economic interests in the country working very hard to see their interests are served versus other interests.

I understand all that, and I understand my view is not the prevailing view. George Gobel once said: ''Did you ever think the world was a tuxedo and you were a pair of brown shoes?'' I feel like George Gobel on this issue.

I understand this bill is on the floor, and it is going to get passed by the Congress. People do not want to entertain this notion, that, gee, there might be some inherent risk out here. This is a case, as I said earlier, of deciding this is where the industry has decided it wants to go, so let's go ahead and put a lodge up so we can accommodate all their interests and where they want to be.

We have been through this before. Where they want to be is not necessarily where this country ought to have them. This country ought to be concerned about safety and soundness of its financial institutions first and foremost. That does not fit—it has never fit—with the understanding that you can merge the interests of banks and other financial and economic activities that are risky.

When you put things together that require safety and soundness with enterprises that have an inherent high risk, you are begging for trouble, and this country will get it. Our banks say to us, ''Well, others have done it; you can do it in other countries.'' Do you want to trade our economy for any other country at the moment? I don't think so. What they are doing in other countries is not the litmus test for what we decide as Americans to do to strengthen our economy, and this bill, in my judgment, if passed, will represent a giant step backward for our economy.

Let me ask one additional question. With all of the debate that I have heard since this legislation came to the floor of the Senate, do you know I have not heard anything about whether or why or if this bill is good for people. Nothing. I wonder if anybody can describe one single thing in this legislation that will be helpful to ordinary folks?

This morning, I talked about the fact we have banks and credit card companies that are saying to their customers these days—it is 1999, so things have changed. I wonder what my grandmother would think if she heard me say there are banks and credit card companies saying to customers: If you pay off your bill every month, we are going to penalize you.

Isn't that Byzantine—we are going to penalize you for paying off your bill. In the old days, you got penalized for not paying your bill. No, the way you make money is for people to carry over a balance and charge a high interest rate. People who use a credit card to purchase every month and pay the full bill off every month are not very good customers; credit card companies do not want those folks around.

I read some examples this morning of companies that say, ''Well, you people, if you're going to pay off your bill like that, shame on you, we're going to charge you a service charge.''

Shame on them. What has financial service come to with this sort of behavior?

Another point. We have a circumstance in this country where —we are going to have a bankruptcy bill later this year, and we will have this discussion later—credit cards, of course, are distributed to everybody in America. I have a 12-year-old son. His name is Brendon. He is a great young guy, a wonderful baseball player. He is a great soccer player. He is a good student. For his benefit, I should say a great student, but he is a good student.

I can describe how wonderful he is in a thousand different ways, but he is only 12. He received a letter in the mail one day from the Diners Club. The Diners Club said: Brendon Dorgan, we want to send you a preapproved Diners Club credit card. So my 12-year-old son appreciates Diners Club. I am sure he has an appetite to spend money. I see it from time to time. It is normally not on big purchases. Normally it is something sweet or something that fizzes at the 7–Eleven, but my son does not need a Diners Club card.

Why would a 12-year-old get a Diners Club card? Why would Diners Club send my son a card? Because they send everybody a card. I assume it was a mistake, he got on the wrong list someplace. They send cards to college kids who have no income and no jobs and say, here is a preapproved bunch of credit for you; here is a card. It is just like a check. You go spend the money. We don't care you don't have a job. We don't care you don't have an income. Here is our card. Take it, please.

That is what is going on in our country today—penalizing people for paying their bills, sending credit cards to 12-year-old kids, sending credit cards to people who have no income or no job. Why, my grandmother would be mortified to think that is the ethic we think makes sense in this kind of an economy.

We cannot correct all of that in this discussion, but we can correct a couple things. I described not my son's credit card solicitation; I described derivatives traded on proprietary accounts in banks. I described potential regulation of risky hedge funds. Those are two big issues and very complicated issues. We can correct that.

I intend to offer two amendments. I will send the first amendment to the desk and then ask that it be set aside by consent, and then I will send to the desk the second one and describe it. The committee chairman and ranking member will then proceed with the bill. They have other amendments I know they are going to have to consider today. I know they want to move ahead and finish whatever business they have with this legislation.

My hope of hopes is enough Members of the Senate will take a look at this bill in final form and say this is a terrible bill, a terrible idea coming at a terrible time, and enough Members would vote against it to say: This is not modernization, this is a huge step back in time, and a huge pit in which we have lost the lessons that we learned earlier in this century. I do not have great hope that will happen, but, who knows, lightening strikes and perhaps at the end of this day, Members of the Senate will say: You know, this wasn't such a good idea after all.

AMENDMENT NO. 312

(Purpose: To prohibit insured depository institutions and credit unions from engaging in certain activities involving derivative financial instruments)

Mr. DORGAN. Mr. President, the first amendment that I send to the desk is an amendment dealing with derivatives. I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative assistant read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 312.

Mr. DORGAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the appropriate place, insert the following:

SEC. ____. LIMITATION ON DERIVATIVES ACTIVITIES.

(a) INSURED DEPOSITORY INSTITUTIONS.—The Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) is amended by adding at the end the following new section:

"SEC. 45. DERIVATIVE INSTRUMENTS.

''(a) DERIVATIVES ACTIVITIES.—

''(1) GENERAL PROHIBITION.—Except as provided in paragraph (2), neither an insured depository institution, nor any affiliate thereof, may purchase, sell, or engage in any transaction involving a derivative financial instrument for the account of that institution or affiliate.

''(2) EXCEPTIONS.—

''(A) HEDGING TRANSACTIONS.—An insured depository institution may purchase, sell, or engage in hedging transactions to the extent that such activities are approved by rule, regulation, or order of the appropriate Federal banking agency issued in accordance with paragraph (3).

''(B) SEPARATELY CAPITALIZED AFFILIATE.—A separately capitalized affiliate of an insured depository institution that is not itself an insured depository institution may purchase, sell, or engage in a transaction involving a derivative financial instrument if such affiliate complies with all rules, regulations, or orders of the appropriate Federal banking agency issued in accordance with paragraph (3).

''(C) DE MINIMIS INTERESTS.—An insured depository institution may purchase, sell, or engage in transactions involving de minimis interests in derivative financial instruments for the account of that institution to the extent that such activity is defined and approved by rule, regulation, or order of the appropriate Federal banking agency issued in accordance with paragraph (3).

''(D) EXISTING INTERESTS.—During the 3-month period beginning on the date of enactment of this section, nothing in this section shall be construed—

''(i) as affecting an interest of an insured depository institution in any derivative financial instrument that existed on the date of enactment of this section; or

''(ii) as restricting the ability of the institution to acquire reasonably related interests in other derivative financial instruments for the purpose of resolving or terminating an interest of the institution in any derivative financial instrument that existed on the date of enactment of this section.

''(3) ISSUANCE OF RULES, REGULATIONS, AND ORDERS.—The appropriate Federal banking agency shall issue appropriate rules, regulations, and orders governing the exceptions provided for in paragraph (2), including—

''(A) appropriate public notice requirements;

''(B) a requirement that any affiliate described in paragraph (2)(B) shall clearly and conspicuously notify the public that none of the assets of the affiliate, nor the risk of loss associated with the transaction involving a derivative financial instrument, are insured under Federal law or otherwise guaranteed by the Federal Government or the parent company of the affiliate; and

''(C) any other requirements that the appropriate Federal banking agency considers to be appropriate.

''(b) DEFINITIONS.—For purposes of this section—

''(1) the term 'derivative financial instrument' means—

''(A) an instrument the value of which is derived from the value of stocks, bonds, other loan instruments, other assets, interest or currency exchange rates, or indexes, including qualified financial contracts (as defined in section 11(e)(8)); and

''(B) any other instrument that an appropriate Federal banking agency determines, by regulation or order, to be a derivative financial instrument for purposes of this section; and

''(2) the term 'hedging transaction' means any transaction involving a derivative financial instrument if—

''(A) such transaction is entered into in the normal course of the institution's business primarily—

''(i) to reduce risk of price change or currency fluctuations with respect to property that is held or to be held by the institution; or

''(ii) to reduce risk of interest rate or price changes or currency fluctuations with respect to loans or other investments made or to be made, or obligations incurred or to be incurred, by the institution; and

''(B) before the close of the day on which such transaction was entered into (or such earlier time as the appropriate Federal banking agency may prescribe by regulation), the institution clearly identifies such transaction as a hedging transaction.''.

(b) INSURED CREDIT UNIONS.—Title II of the Federal Credit Union Act (12 U.S.C. 1781 et seq.) is amended by adding at the end the following new section:

"SEC. 215. DERIVATIVE INSTRUMENTS.

''(a) DERIVATIVE ACTIVITIES.—Except as provided in subsection (b), neither an insured credit union, nor any affiliate thereof, may purchase, sell, or engage in any transaction involving a derivative financial instrument.

''(b) APPLICABILITY OF SECTION 45 OF THE FEDERAL DEPOSIT INSURANCE ACT.—Section 45 of the Federal Deposit Insurance Act shall apply with respect to insured credit unions and affiliates thereof and to the Board in the same manner that such section applies to insured depository institutions and affiliates thereof (as those terms are defined in section 3 of that Act) and shall be enforceable by the Board with respect to insured credit unions and affiliates under this Act.

''(c) DERIVATIVE FINANCIAL INSTRUMENT.—For purposes of this section, the term 'derivative financial instrument' means—

''(1) an instrument the value of which is derived from the value of stocks, bonds, other loan instruments, other assets, interest or currency exchange rates, or indexes, including qualified financial contracts (as such term is defined in section 207(c)(8)(D)); and

''(2) any other instrument that the Board determines, by regulation or order, to be a derivative financial instrument for purposes of this section.''.

(c) BANK HOLDING COMPANIES.—Section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) is amended by adding at the end the following new subsection:

''(h) DERIVATIVES ACTIVITIES.—

''(1) IN GENERAL.—A subsidiary of a bank holding company may purchase, sell, or engage in any transaction involving a derivative financial instrument for the account of that subsidiary if that subsidiary—

''(A) is not an insured depository institution or a subsidiary of an insured depository institution; and

''(B) is separately capitalized from any affiliated insured depository institution.

''(2) APPLICABILITY OF SECTION 45 OF THE FEDERAL DEPOSIT INSURANCE ACT.—Section 45 of the Federal Deposit Insurance Act shall apply with respect to bank holding companies and the Board in the same manner that section applies to an insured depository institution (as such term is defined in section 3 of that Act) and shall be enforceable by the Board with respect to bank holding companies under this Act.

''(3) DERIVATIVE FINANCIAL INSTRUMENT.—For purposes of this subsection, the term 'derivative financial instrument' means—

''(A) an instrument the value of which is derived from the value of stocks, bonds, other loan instruments, other assets, interest or currency exchange rates, or indexes, including qualified financial contracts (as such term is defined in section 207(c)(8)(D)); and

''(B) any other instrument that the Board determines, by regulation or order, to be a derivative financial instrument for purposes of this subsection.''.

Mr. DORGAN. Mr. President, I will not explain this in great detail, except to say, as I described in my earlier remarks, my intention is to say it is inconsistent with the obligations and our expectations of institutions whose deposits are insured by depository insurance and, in fact, guaranteed by the American taxpayer for them to be trading in derivatives on their own proprietary accounts.

I understand banks being a conduit for the trading of derivatives for customers, but for banks in their own proprietary accounts to be taking the kinds of risks that exist in derivatives I think exposes all taxpayers in this country who are the guarantors of that deposit insurance to those kinds of risks. They may just as well put some kind of a slot machine in the lobby of a bank if they are going to trade in derivatives on their own account.

I say to the people who own the capital in these banks, if you want to gamble, go to Las Vegas. If you want to trade in derivatives, God bless you. Do it with your own money. Do not do it through the deposits that are guaranteed by the American people and by deposit insurance. My amendment prohibits the trading of derivatives on their proprietary account.

I ask unanimous consent that the amendment be set aside.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 313

(Purpose: To subject certain hedge funds to the requirements of the Investment Company Act of 1940)

Mr. DORGAN. Mr. President, I send a second amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative assistant read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 313.

Mr. DORGAN. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end of title III, insert the following:

SEC. 312. TREATMENT OF LARGE HEDGE FUNDS UNDER INVESTMENT COMPANY ACT OF 1940.

Section 3(c) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(c)) is amended—

(1) in paragraph (1), in the first sentence, by inserting '', which has total assets of less than $1,000,000,000, and'' after ''hundred persons''; and

(2) in paragraph (7), in the first sentence, by inserting ''which has total assets of less than $1,000,000,000,'' after ''qualified purchasers,''.

Mr. DORGAN. Mr. President, I want to tell a story as I describe this amendment. About 10 years ago, I was serving in the House of Representatives on the Ways and Means Committee. Ten years ago, as you might recall, in this country we had the marketing of junk bonds; that is, noninvestment grade bonds by Drexel Burnham and Michael Milken. Junk bonds were used increasingly for hostile takeovers. It was a go-go economy. They held conferences and talked about how you could turn a minnow into a whale and arm a minnow with junk bonds and they will go and bite the tail off the whale. You had little companies buying big companies. It was a remarkable thing to see.

One of the things that occurred to me was how unhealthy and unholy it was in this country that junk bond sellers were parking junk bonds with savings and loans. Our savings and loans, whose deposits were insured by the Federal Government, were then ending up with junk bonds, noninvestment-grade bonds, in their portfolios, so that if the enterprise went belly up, the American taxpayers would end up paying the bill.

Let me give you the creme de la creme, the hood ornament on the excess. The hood ornament was that we had one of biggest casinos in the country built in Atlantic City, glitzy and big. Junk bonds were for the casino, noninvestment-grade bonds. With junk bonds they build the casino. The junk bonds get parked with the savings and loan. The savings and loan goes belly up. Guess who ends up with the junk bonds that are nonperforming and a big casino. The American taxpayer. The U.S. Government and the American taxpayer end up holding junk bonds that are nonperforming junk bonds in a casino.

How did that happen? Because it was all right according to our regulators, and all right according to law, for our savings and loans to go out and buy junk bonds and load up. One California S&L had, I think, nearly 60 percent of its assets involved in junk bonds.

So I got an amendment passed. It is now law. Some people have never forgiven me for it, because I got an amendment passed that said savings and loans—that is, those whose deposits are insured by the Federal Government—cannot purchase junk bonds and must divest those they have.

I had a devil of a time getting it passed, just an awful time. I got it passed. It became law and caused all kinds of chaos for those who were parking all these bonds at S&Ls, playing the financial roulette game they were playing. It was the right thing to have done for the taxpayers of this.

I mention that only because financial institutions will do what they must and will do what they can under the rules as long as we are looking the other way. I am not saying they are all irresponsible. I am saying they are all going to try to pursue the largest rate of return they can possibly pursue, especially if you have the deposits underwritten. Those institutions are going to take advantage of these opportunities. It was true in the 1980s; it will be true in the next decade as well.

The lesson with respect to junk bonds, the lesson with respect to derivatives and hedge funds, is that we have to be vigilant. Did the bank regulators jump on this and deal with it? No. In fact, the Secretary of the Treasury would come to the Ways and Means Committee. I would say: Mr. Secretary, we have a crisis going on here. What on earth are you doing? Sitting on your hands? Oh, no, Congressman DORGAN, there isn't a crisis at all; there's no problem. There is no problem here at all.

Well, the problem turned out to be hundreds of billions of dollars for the American taxpayer, because those who were supposed to be involved in regulation looked the other way.

As we pass this piece of legislation today, we would do ourselves a favor, I think, passing an amendment that would prohibit proprietary trading in derivatives by banks and also passing the amendment I just sent to the desk that would provide regulation for risky hedge funds that have at least $1 billion or more in assets. It is a handful of hedge funds, perhaps fewer than 50. They have aggressive leverage. It seems to me that while I would like to be more aggressive in the regulation of hedge funds, at least this should be a start in dealing with this issue.

Mr. President, I will not offer a third amendment. I will offer only these two amendments. I believe that the legislation is inappropriate at this time, and I intend to vote against the legislation on final passage. As I have said on a couple occasions this afternoon, I think this is a giant step backward. I think it is exactly the wrong direction for our country. I think it does nothing for ordinary people, does not address any of the issues. It is something that will make a number of the largest enterprises in this country that are already making substantial profits very, very happy. I guarantee every Member of this body that if this legislation is passed, when you wake up day after day, week after week, and month after month, you will read the news of more and more and more mergers and greater concentration.

Then don't you come to the floor of the Senate and talk to me about competition and don't you come to the floor of the Senate and started preaching about free markets. The opportunity to respond to real competition and free markets, in my judgment, is, by turning this legislation down, enforcing strong antitrust enforcement, and being thoughtful about the things we have to do in the future to preserve the safety and soundness of our banks and, yes, to encourage investment and encourage economic activity in other sectors of our economy.

Let me conclude by saying I am not someone who thinks that big firms are bad. I don't believe that at all. Nobody is going to build a 757 jet airplane in the garage in Regent, ND. Economies of scale are important. Some of the largest enterprises in our country have contributed mightily to this country and its economy. But I also believe that what contributes most to this country is good old-fashioned healthy competition, broad-based economic ownership. I know it is a timeworn and, some consider, old-fashioned Jeffersonian notion of democracy that broad-based economic ownership is what eventually guarantees economic freedom and what eventually underscores and guarantees political freedom as well. That is something that is very important to this country's future.

We do not advance in that direction by passing legislation that will further concentrate and further provide inducements for more mergers and bigger, more concentration and bigger companies. That will not advance this country's interests.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, our current blueprint is that we are going to vote on the unitary thrift amendment at 3:45. Each side will have 3 minutes to speak on that issue. I will ask Senator GORTON to speak on behalf of the majority.

At the conclusion of that vote, the Shelby amendment will be considered. That is the amendment which would allow banks to provide broad financial services within the structure of the bank rather than through the holding company. We have agreed to a 2-hour debate on that amendment. If we were on that amendment, say, at 10 after 4, we would be through with that amendment at 10 after 6.

I do not know of another major amendment. I urge my colleagues who have amendments, since we have a lot of Members hoping not to be here tomorrow—Members walking by do not object to that, I assume—who would like to catch a flight back to their States at a reasonable hour, if they could, not to convenience me or to convenience my colleague, Senator SARBANES, but to convenience all 100 Members of the Senate, I urge Senators who have amendments to come to the floor and present them. Please don't show up at 6:10 and say, oh, by the way, I just had an idea last night while I was having dessert that I would like to redo the whole banking system of the United States of America and I would like to change the number of people on the Federal Reserve Bank board and I talked to the newspaperman today and he thought it was a great idea.

If you have an amendment, I hope you will come and let us look at it and talk about it. Hopefully, we can take some of these amendments and save time. I urge my colleagues, for the convenience of all of our Members, if you have amendments, to come down here before 4 and let us talk about them.

Please don't show up when the Shelby amendment is finished at 6:10 and say I have all these ideas and I want to deal with them.

I thank my colleagues in advance for their cooperation.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative assistant proceeded to call the roll.

Mr. GRAMM. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I ask unanimous consent that the pending unanimous-consent agreement that we are operating under be temporarily set aside so that Senator SCHUMER can offer an amendment. If I understand the amendment correctly, I intend to accept it, and I assume Senator SARBANES will accept it. I think it is important to go ahead and get that amendment out of the way. Whenever he is ready, I wanted to be sure that we were in a position that he could be recognized without undoing any of the agreements on the vote at 3:45, or the unanimous-consent request on the Shelby amendment, starting whenever that vote is finished.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAMM. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. FITZGERALD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

VISIT WILD AND WONDERFUL WEST VIRGINIA

Mr. BYRD. Mr. President, May 2–8 is National Tourism Week, and I would like to take a few minutes to encourage anyone planning their summer vacation—and this is the time; this is the time to plan the summer vacation. Let me tell you where the place is. This is the place: West Virginia. Anybody who is planning the summer vacation—or looking farther ahead to next year's winter vacation—should consider my favorite destination: West Virginia.

I have been in Rome. I have traveled to Agra. I have seen the Taj Mahal. I have walked in the shadows of the pyramids. I have seen the Pantheon and the Parthenon. I have met with great leaders all over the world, face to face, such as the late President Sadat and Generalissimo Chiang Kai-Shek. I joined with the Generalissimo and the madam on their birthday up at Sun Moon Lake many years ago. But let me tell you, after having been to these four points of the compass, my favorite destination is still West Virginia. And I have visited Texas, may I say to my friend, the senior Senator from the Lone Star State. I made 26 speeches in the Bible Belt of Texas in 1960. I traveled over the northeastern part of Texas making speeches—26 in 3 days. I even took my fiddle with me and played a few tunes. Anyhow, there is just nothing like West Virginia. That is my favorite destination.

Within an easy drive of much of the Nation, West Virginia offers one delight after another, whether for families, adventurers, romantic couples, or groups.

If you are interested in history, may I say to my Senate colleagues, West Virginia has plenty, from delicate millennia-old fern and trilobite fossils embedded in her coal seams and rock outcroppings to the monumental burial mounds of the mysterious Adena people that date back to 1000 B.C. And I can tell you about history that goes much farther back than that.

Frontier forts that mark West Virginia's time at the leading edge of American expansion are scattered across the State, and are populated with costumed, re-enactors who can weave fascinating true stories of the sometimes harrowing escapades experienced by our Nation's early settlers. Point Pleasant, WV, marks the site of the first land battle of the Revolutionary War. Numerous Civil War battlefields abound from West Virginia's tumultuous birth as a State, none more famous than Harper's Ferry, where in 1859 abolitionist John Brown led a raid on the U.S. arsenal, sparking a chain of events leading to that epic struggle.

Industries that sparked a different kind of revolution still operate in West Virginia, from the steel mill in Weirton, WV, where we have the largest ESOP in the world—that is, Employee-Stock Option Plan—to the coal mines in southern West Virginia. In Beckley, you can visit a coal mine and see firsthand the danger and effort involved in extracting the compressed energy that still provides almost half of the Nation's electricity. And those who love classic locomotives would feel at home there, as several steam excursions offer the opportunity to chug behind a puffing engine as it clickety-clacks through scenes of pastoral harmony.

West Virginia's history sings through the music festivals scheduled across the state throughout the year, ranging from classical to country, bluegrass to jazz. History also comes to life in the fine crafts produced in small village potteries and quilting bees as well as by storied West Virginia glass makers whose wares have been presented to presidents and foreign heads of state. And history continues to be made by her artisans, musicians, and writers, many of whom are accessible at craft